

FEB - 4 2019

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:18 CR 092U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

UNITED STATES OF AMERICA)

v.)

JAMES E. MACALPINE)

RULE 11 INQUIRY &
ORDER OF ACCEPTANCE
OF PLEA

The Court is advised that you have filed a written plea agreement with the Government in this case. The Court is required by the Federal Rules of Criminal Procedure to inquire and advise you concerning the agreement. The Court must ask you some questions and you will be required to personally respond to those questions under oath. I will now ask the Clerk to administer the oath to you.

1. Do you understand that you are now under oath and that you are required to give truthful answers to the questions that I am about to ask you?

YES: ☒NO: ☐

2. Do you understand that if you give false information under oath you may be prosecuted for perjury or false statements?

YES: ☒NO: ☐

3. Are you able to hear and understand my questions?

YES: ☒NO: ☐

4. Do you understand that you have the right to have a United States District Judge conduct this proceeding?

YES: ☒NO: ☐

5. Recognizing your right to proceed before a district judge, do you expressly consent to proceed in this Court, that is, before a United States Magistrate Judge?

YES: ✓ NO:

6. a) There has been presented to me a document entitled "Sealed Addendum to Entry and Acceptance of Guilty Plea" which provides information to me concerning your name, age, education, use of drugs or alcohol and medical information. Did you provide the information for the completion of that document and did you sign that document?

YES: ✓ NO:

- b) Is all the information provided in the document true and accurate?

YES: ✓ NO:

7. Is your mind clear and do you understand that you are here today to enter a guilty plea that cannot later be withdrawn?

YES: ✓ NO:

8. Have you and your attorney reviewed the bill of indictment and have you and your attorney reviewed the plea agreement?

YES: ✓ NO:

9. From my examination of the plea agreement I am advised that you are pleading guilty to Count One as contained in the Bill of Indictment.

Read Count One of the Bill of Indictment to which Defendant is pleading guilty. Are you pleading guilty to that offense?

YES: ✓ NO:

The law requires that I advise you of the essential elements of such offense. Before I advise you of those elements, I am going to read to you the statute that is alleged that you have violated.

Count One:

26 U.S.C. § 7201. Attempt to Evade or Defeat Tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Elements:

1. That there existed a substantial tax deficiency, that is, that you owed taxes to the Internal Revenue Service;
2. That you committed an affirmative act constituting an evasion or attempted evasion of the tax; and
3. That you did so unlawfully, knowingly, intentionally and willingly.

Penalties:

I am also required by law to advise you concerning the maximum and minimum penalties prescribed by law for such an offense.

The maximum possible penalty for this offense is a term of imprisonment for not more than 5 years, a fine not to exceed the sum of \$250,000, or twice the gross gain or twice the gross loss, whichever is greatest, or both, a term of supervised release of not more than 3 years and a \$100 special assessment.

10. Do you understand that if you are not a citizen of the United States, your guilty plea may result in your deportation from this country, your exclusion from admission to this country, or the denial of your naturalization under federal law?

YES: ✓

NO: _____

11. a) Do you fully understand the charge against you, including the maximum and minimum penalties?

YES: ✓ NO:

- b) Do you understand each element of the offense charged?

YES: ✓ NO:

- c) Do you understand that upon a plea of not guilty the Government would be required to prove each element of the offense charged beyond a reasonable doubt?

YES: ✓ NO:

- d) Do you understand that the Government would be required to prove that the unlawful act(s) were committed knowingly, willfully, intentionally, and unlawfully?

YES: ✓ NO:

12. If the Court imposes an active term of imprisonment of more than one year, the Court is required also to order a term of what is called "supervised release," and a term of supervised release may be ordered in other circumstances. This means that after a defendant is released from prison, there are certain terms and conditions they will be required to follow. The length of supervised release usually ranges from one to five years but may be more or less than that for certain offenses. Do you understand the terms "supervised release" as the Court has explained them to you?

YES: ✓ NO:

13. Do you understand that if you violate the terms and conditions of supervised release, you could be returned to prison for an additional period of time?

YES: ✓ NO:

14. Do you understand that parole has been abolished in the federal system; and if you are sentenced to a term of imprisonment, you will not be released on parole?

YES: ✓ NO:

15. Have you and your attorney discussed how the United States Sentencing Guidelines may apply in your case?

YES: ✓ NO:

16. Do you understand how these Guidelines may apply to you?

YES: ✓ NO:

17. Do you understand that the Court will not be bound by the Sentencing Guidelines but nonetheless must consult those Guidelines and take them into account when sentencing?

YES: ✓ NO:

18. Do you understand that the sentence the Court will impose will be within the statutory limits and in the Court's sound discretion and could be greater or less than the sentence as provided for by the Guidelines?

YES: ✓ NO:

19. Do you understand that the Court will follow the procedural components of the Guidelines system, which means that the Probation Office will prepare a presentence report which contains Guidelines calculations and both you and the Government will have an opportunity to object to any alleged deficiencies in the report?

YES: ✓ NO:

20. Do you understand that in some circumstances you may receive a sentence that is different—that is, either higher or lower—than that called for by the Guidelines?

YES: ✓ NO:

21. Do you understand that if the sentence is more severe than you expect, or the Court does not accept the Government's sentencing recommendation, you will still be bound by your plea and have no right to withdraw the plea of guilty?

YES: ✓ NO:

22. Do you understand that the Court has the discretion, in appropriate circumstances, to order you to make restitution to any victim of any offense. The Court may also, in the appropriate circumstance, require you to pay the costs of your confinement in prison or costs of supervision or special investigative costs or all of these costs. The

Court may also require you to forfeit property involved in the offense. Do you understand these requirements as I have explained them to you?

YES: ✓

NO: _____

23. Do you understand you have a right to plead not guilty, to have a speedy trial before a judge and jury, to summons witnesses to testify in your behalf, and to confront witnesses against you?

YES: ✓

NO: _____

24. Do you understand that if you exercise your right to trial you would be entitled to the assistance of an attorney, that you would not be required to testify, that you would have the right to voluntarily testify and to present evidence at trial, to compel the attendance of witnesses, that you would be presumed innocent, and the burden would be on the Government to prove your guilt beyond a reasonable doubt. Do you understand all of these rights?

YES: ✓

NO: _____

25. Do you understand that by entering a plea of guilty you forfeit and waive (or give up) your right to plead not guilty, to a trial by jury and at that trial the right to assistance of counsel, the right to confront and cross-examine witnesses against you, the right against compelled self-incrimination, the right to voluntarily testify on your own behalf and to present evidence at trial, to compel the attendance of witnesses, and any other rights associated with a jury trial. Do you understand that by entering this plea of guilty you are waiving (or giving up) all of these rights. A trial will not be held. If your plea of guilty is accepted, there will be one more hearing where the District Court will determine what sentence to impose:

Do you understand those things?

YES: ✓

NO: _____

26. Are you, in fact, guilty of the count in the Bill of Indictment to which you have come to court today to plead guilty? That is, did you commit the act(s) described in Count One of the Bill of Indictment?

YES: ✓

NO: _____

27. a) Is your plea of guilty voluntary?

YES: ✓

NO: _____

- b) Other than the promises contained in the written plea agreement, has anyone made any promise to you or threatened you in any way to cause you to enter this plea of guilty against your wishes?

YES: _____

NO: ✓ _____

- c) Do you enter this plea of guilty of your own free will, fully understanding what you are doing?

YES: ✓ _____

NO: _____

28. Do you understand that entering a plea of guilty to a felony charge may deprive you, at least for a time, of certain civil rights such as the right to vote, hold a public office, serve on a jury and possess a firearm?

YES: ✓ _____

NO: _____

29. Is your willingness to plead guilty the result of prior discussions between your attorney and the attorney for the Government?

YES: ✓ _____

NO: _____

30. Have you and the Government entered into a plea agreement in regard to this case? [Attorney for the Government will present the terms of the agreement.]

YES: ✓ _____

NO: _____

31. Do you understand and agree with the terms of the plea agreement as they have just been explained to you?

YES: ✓ _____

NO: _____

32. Is this your signature on the plea agreement?

YES: ✓ _____

NO: _____

33. Have you discussed your right to appeal with your attorney, and do you understand the plea agreement in this case provides that you may not appeal your conviction or sentence or contest the same in a post-conviction proceeding unless it is on the grounds of prosecutorial misconduct or ineffective assistance of counsel?

YES: ✓ NO:

Do you knowingly and willingly accept this limitation on your right to appeal and to file post-conviction proceedings?

YES: ✓ NO:

34. Counsel, have you reviewed each of the terms of the plea agreement with Defendant and are you satisfied that Defendant understands those terms?

YES: ✓ NO:

35. Have you had ample time to discuss with your attorney any possible defenses that you may have to the charge and have you told your attorney everything that you want your attorney to know about this case?

YES: ✓ NO:

36. Are you entirely satisfied with the services of your attorney?

YES: ✓ NO:

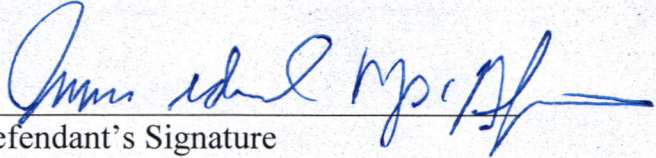
37. Are you telling the Court that you know and understand fully what you are doing; that you have heard and understood all parts of this proceeding; and that you want the Court to accept your plea of guilty?

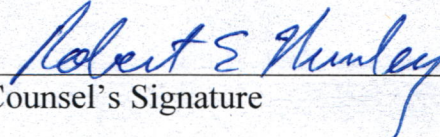
YES: ✓ NO:

38. Do you have questions, statements, or comments to make about anything brought up or discussed in the course of the proceeding? If you do, I will be happy to try and answer your questions or I will be glad to hear any statements or comments that you want to make.

YES: NO: ✓

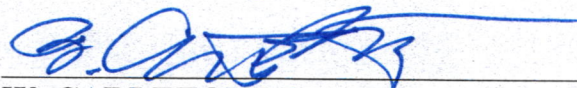
On advice and in the presence of counsel, Defendant respectfully requests the Magistrate Judge to accept his or her guilty plea. By signing below, Defendant and counsel certify and affirm that the answers given to the questions propounded by the Court, as recorded above and on the record, are true and accurate to the best of their knowledge.


Defendant's Signature


Counsel's Signature

Based upon the representations and answers given by Defendant and counsel in the foregoing Rule 11 proceeding, the Court finds that Defendant's plea is knowingly and voluntarily made; and that Defendant understands the charge, potential penalties, and consequences of said plea. The Court further finds that Defendant's plea is supported by an independent basis in fact containing each of the elements of the offense charged against Defendant in Count One of the Bill of Indictment. Based thereon Defendant's plea is hereby accepted. In addition, I recommend that the District Court accept Defendant's plea and enter judgment thereon. If you have any objection to my recommendation, you have 14 days to file any such objections in writing with this Court. If you fail to object within that 14-day period, it will be deemed a waiver of any such objection.

SO ORDERED, this the 4th day of February 2019.


W. CARLETON METCALF
UNITED STATES MAGISTRATE JUDGE